PUBLIC PROSECUTOR

v.

NG CHONG WAN

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[CRIMINAL APPEAL NO. CR52-50]
5 DECEMBER 1987

CRIMINAL LAW: *Appeal against sentence - Unlawful possession of firearms and ammunition - Plea of guilty - Should the Court interefere with sentences passed by the Court below.*

The accused pleaded guilty to two charges, for the possession of a Smith and Wesson 38 Special Revolver, an of 38 Special Revolver ammunitions an offence punishable under s. 8(a) of the Arms Act 1960 (Revised 1978). On the first charge he was sentenced to seven years imprisonment with effect from the date of arrest. Both sentences were to run concurrently.

The Public Prosecutor appealed against the inadequacy of the sentence.

Held:

[1] the Court will only interfere with the sentence if the Court below had erred in principle or where there was a failure to apply the right principles when passing the sentences.

[2] the Court may also interfere with the sentences if the sentences are unsuitable to the proved facts and circumstances.

[3] in considering sentencing the Court will take into account the preventive and deterrent principles.

[4] in the present case, the offences committed were mere possession of firearm and ammunition. There is no evidence that the accused used the gun to commit an offence.

[Appeal dismissed and the sentence passed by the Court below confirmed.]

Cases referred to:
Abu Bakar Bin Alif [1953] 19 MLJ 19
Public Prosecutor v. Fan Kim Hock [1957] 23 MLJ 20
Public Prosecutor v. Teh Ah Cheng [1976] 2 MLJ 186
Public Prosecutor v. Chung Kwong Huah [1981] 1 MLJ 316
Lee Chow Meng v. Public Prosecutor [1976] 1 MLJ 286

Legislation referred to:
Firearms (Increased Penalties) Act 1971, s. 8
Arms Act 1960, ss. 8(a), 9(a)

For the respondent - C.W. Chan (Ng Aik Guan, DPP with him)

JUDGMENT

Zakaria Yatim J:

The respondent was charged in the Sessions Court for possession of a Smith & Wesson. 38 special revolver, an offence punishable under s. 8 of the Firearms (Increased Penalties) Act 1971. He was also charged for possession of ten rounds of. 38 special revolver ammunition, an offence punishable under s. 8(a) of the Arms Act 1960 (Revised 1978).

The respondent pleaded guilty to both charges. On the first charge he was sentenced to seven years' imprisonment and six strokes of whipping. On the second charge he was sentenced to five years' imprisonment with effect from the date of arrest. Both sentences were to run concurrently.

The Public Prosecutor, was dissatisfied with the sentences passed by the President and appealed to this Court against both sentences.

The Deputy Public Prosecutor in his submission told the Court that the sentences were "manifestly inadequate and inappropriate." According to him the respondent had one previous conviction for receiving stolen property. The learned Deputy urged the Court to enhance the sentences or alternatively, the two sentences be made consecutive.

The first point to consider is whether the Court should interfere with the sentences passed by the Court below. The Court will only interfere with the sentences if the Court below had erred in principle or when there was a failure to apply the right principles when passing the sentences. See *Abu Bakar bin Alif v. R.* [1953] 19 MLJ 19. The Court may also interfere with the sentences if the sentences are unsuitable to the proved facts and circumstances. See *Public Prosecutor v. Fam Kim Hock* [1957] 23 MLJ 20.

The Courts in this country view offences of possession of firearms and ammunitions very seriously. In *Public Prosecutor v. Teh Ah Cheng* [1976] MLJ, Abdoolcader J, as he then was, expressed the view of the Court in the following words:

> It is my view that particularly in these times where the unlawful possession and use of firearms is rampant and ever increasing, a custodial sentence at the very least, of a term commensurate with the circumstances of the case, is called for ... The Courts may not perhaps have to wholly reflect public opinion but they certainly must not be indifferent or disregard it, and it must be made abundantly clear that in the light of the appalling increase in crimes involving violence and unlawful possession and use of lethal weapons, society is crying out 'enough is enough' and is no longer in any mood to tolerate such offenders who like serpents in the front law of justice disrupt law and order. So be it clearly made known that the forces of justice will be vigorously brought to bear upon these engineers of evil who must be made to realise that if they indulge violence or arm themselves with weapons of violence they will lose their liberty ...

In *Public Prosecutor v. Chung Kwong Huah* [1981] 1 MLJ 316, Chan J said,

> The man who carries a gun has the capacity to use it for it is all too easy to translate from mere possession into actual use with disastrous results.

In *Lee Chow Meng v. Public Prosecutor* [1976] 1 MLJ 286, Abdul Hamid J, as he then was said,

> It would say that it is common knowledge that, of late, commission of offences involving firearms has been prevalent in Kuala Lumpur and I think the court is entitled to take judicial notice of the fact.

In my opinion, when considering what should be the proper sentences in cases of possession of firearms and ammunition, the Court has to bear in mind that public interest should be protected. The only way to protect the public interest is to impose deterrent sentences. In *Teh Ah Cheng supra.,* Abdoolcader J took into account the element of public interest in considering sentence. He also took into account the preventive principle. In *Chung Kwong Huah, supra.* Chan J also took into consideration the deterred principle. The learned judge also applied the retribution principle. Similarly in *Lee Chow Meng, supra.,* Abdul Hamid J also took public interest into account.

The learned President in his grounds of judgment took into account the public interest and applied the deterrent principle. In my view he has applied the right principle. The question is whether the sentences passed by him were manifestly inadequate and inappropriate as alleged by the learned Deputy.

In *Teh Ah Cheng,* the respondent pleaded guilty to two charges of unlawful possession of an automatic pistol and six rounds of ammunition under the Arms Act 1960. Abdoolcader J, sentenced him to three years' imprisonment in respect of each charge. In Chung Kwong Huah Chan J sentenced the accused to ten years imprisonment and six strokes for possession of a Smith & Wesson. 32 revolver under Firearms (Increased Penalties) Act, 1971. For possession of six rounds of ammunition he sentenced the accused to three years imprisonment. In *Lee Chow Meng,* Abdul Hamid J confirmed the sentence of ten years imprisonment and six strokes passed by the Sessions Court for unlawful possession of an automatic pistol punishable under s. 8 of the Firearms (Increased Penalties) Act; and a sentence of seven years imprisonment for unlawful possession of 30 rounds of ammunition punishable under s. 9(a) of the Arms Act 1960. It should be noted that in *Lee Chow Meng's* case robbery was committed and the firearm was used in the course of the robbery. In the circumstances the sentences of ten years imprisonment and six strokes and seven years imprisonment were justified.

In the present case, the offences committed were mere possession of the firearm and ammunitions. There is no evidence that he used the gun to commit an offence. He pleaded guilty to both charges in the Sessions Court. Considering all the facts and circumstances in this case, I think the sentences passed by the learned President should not be disturbed.

One last point to consider: Whether the sentences should run concurrently or consecutively. In both *Teh Ah Cheng and Chung Kwong Huah,* sentences were ordered to run concurrently. In *Lee Chow Meng,* Abdul Hamid J ordered the sentences to run consecutively but as already pointed out, in that case, the gun was used to commit robbery.

In my opinion the President was not wrong in law when he ordered the sentences to run concurrently.

For the reasons stated above, I dismiss the appeal and confirm the sentences passed by the learned President.

Also found at [1988] 2 CLJ 833